

AMENDED IN ASSEMBLY JUNE 15, 2004

AMENDED IN ASSEMBLY MAY 27, 2004

AMENDED IN SENATE APRIL 13, 2004

SENATE BILL

No. 1210

Introduced by Senator Torlakson
(Coauthor: Senator Ducheny)
(Coauthor: Assembly Member Bates)

February 10, 2004

An act to add Part 6 (commencing with Section 22400) to Division 2 of the Public Contract Code, ~~and~~ to amend Section 217 of, and to add and repeal Sections 217.7, 217.8, and 217.9 ~~to~~ of, the Streets and Highways Code, relating to highways.

LEGISLATIVE COUNSEL'S DIGEST

SB 1210, as amended, Torlakson. Design-build transportation infrastructure project contracts: design-sequencing contracts.

(1) Existing law sets forth procedures applicable to public contracts.

This bill would establish new procedures applicable to all public agencies relative to design-build transportation infrastructure projects.

(2) Existing law authorizes the Department of Transportation until January 1, 2005, to conduct a pilot project to let design-sequencing contracts, as defined, for the design and construction of not more than 12 transportation projects, to be selected by the Director of Transportation.

This bill would establish a phase 2 of this pilot project that would be in effect until January 1, 2010. The bill would require the director to consider selecting projects that improve interregional and intercounty routes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Part 6 (commencing with Section 22400) is added to Division 2 of the Public Contract Code, to read:

PART 6. TRANSPORTATION INFRASTRUCTURE
DESIGN-BUILD ACT

22400. This part shall be known as, and may be cited as, the Transportation Infrastructure Design-Build Act.

22401. This part enables public entities to use a best value process for procurement of design-build contracts for transportation infrastructure projects.

22402. The Legislature finds and declares all of the following:

(a) It is in the best interests of state, regional, and local public entities to construct, modernize, retrofit, replace, improve, rehabilitate, renovate, convert, and repair transportation infrastructure projects in a cost-efficient manner that represents the best overall value to the taxpayers. To accomplish this goal, state, regional, and local public entities must have the authority and ability to utilize the best possible project delivery process available.

(b) The design-build delivery methodology is an attractive and valuable alternative to *the* use of a design-bid-build methodology, and can improve project delivery in the following ways:

(1) Accelerating delivery schedules and completion of the project.

(2) Shifting the liability and management risk for cost containment and project completion and operation from the public entity to the design-build contractor.

(3) Increasing cost savings due to improved coordination and communication between the project designer and contractor.

(4) Reducing construction complexity and decreasing the number of change orders due to early collaboration between design and construction disciplines.

(5) Minimizing the project's life cycle costs.

(6) Improving the project's reliability, performance, and operational efficiencies.

(7) Placing accountability and responsibility for the project's design and construction in a single design-build team or entity.

22403. (a) In enacting this part, the Legislature intends to allow ~~state, regional, and local entities~~ *a county, a city and county, a local transportation authority, or a regional transportation agency* to use the design-build delivery methodology for transportation infrastructure projects when those entities deem it is in the public interest to do so.

(b) The Legislature does not intend this part to preclude any public entity from proceeding with a design-build procurement pursuant to separate enabling authorization. Public entities shall have the option to proceed using the procurement process described in this part or any other process permitted by applicable law.

(c) This part includes a process for the selection and award of subcontracts entered into by design-build contractors pursuant to this part in a manner that retains protection for subcontractors, while also enabling design-build projects to be administered in an efficient fashion.

22404. The following definitions apply to this part:

(a) "Best value process" means a procurement process whereby a public entity selects a contractor based on (1) an evaluation of proposals received with reference to price and other factors deemed appropriate by the public entity and (2) a determination, based on that evaluation, that the proposal submitted by the selected contractor offers the best value to the public.

(b) "Design-build" means a delivery methodology in which both the design and construction of a project are procured from a single entity.

(c) "Design-build contract" means *a* contract between a public entity and a design-build contractor to furnish all or some of the planning, architecture, engineering, and related professional services necessary for a given public project, and to furnish labor, materials and other construction services for the same public project. A design-build contract awarded pursuant to this part may include operation and maintenance elements, if the inclusion of those elements (1) is necessary, in the reasonable judgment of the

1 public entity, to assess vendor representations and warranties,
2 performance guarantees, or life cycle efficiencies, and (2) does not
3 conflict with collective bargaining agreements to which the public
4 entity is a party.

5 (d) “Design-build contractor” means a partnership,
6 corporation, or other legal entity that is an appropriately licensed
7 contractor and that is either appropriately licensed to perform all
8 required design professional services required for the project or
9 that has contracted with appropriately licensed design
10 professionals to provide such services.

11 (e) “Public entity” has the same meaning as defined in Section
12 1100 and includes joint powers authorities.

13 (f) “*Transportation authority*” means an authority designated
14 pursuant to Division 19 (commencing with Section 180000) of the
15 *Public Utilities Code*.

16 (g) “Transportation infrastructure project” means ~~any~~ either
17 of the following:

18 (1) A state or local highway, bridge, or tunnel project, and
19 associated improvements.

20 (2) A transit system or passenger or freight railroad, including
21 a rail transit system, commuter railroad, intercity railroad,
22 ~~high-speed railroad~~, and bus rapid transit system, and associated
23 improvements.

24 ~~(3) Improvements that are reasonably necessary for the~~
25 ~~effective operation of a method of transportation, including an~~
26 ~~intermodal transfer or staging area, weigh station, inspection~~
27 ~~station, rest area, service station, restaurant, train or bus station,~~
28 ~~warehouse, freight interchange, switching yard, maintenance~~
29 ~~yard, utility facility, drainage facility, and pipeline pumping~~
30 ~~station.~~

31 22405. Notwithstanding any other provision of law, a public
32 entity may award a design-build contract for any transportation
33 infrastructure project by following the requirements of this part.

34 22406. Before commencement of a design-build procurement
35 under this part, the public entity shall publish separately or
36 incorporate into the procurement documents applicable rules and
37 procedures applicable to the procurement to ensure that the
38 process is conducted in accordance with the requirements of this
39 part, in a fair and impartial manner. Those procedures shall
40 include, but not be limited to, the following:

- 1 (a) Public announcement procedures.
- 2 (b) Letters of interest requirements.
- 3 (c) Prequalification requirements for the design-build teams,
- 4 or shortlisting criteria and procedures.
- 5 (d) Scope of work statement that may include the following:
 - 6 (1) Preliminary design concepts.
 - 7 (2) Design criteria, needs, and objectives.
 - 8 (3) Warranty and quality control requirements.
 - 9 (4) Applicable standards.
 - 10 (5) Environmental documents.
 - 11 (6) Constraints.
 - 12 (7) Time expectations or limitations.
 - 13 (8) Incentives or disincentives.
 - 14 (9) Other special considerations.
- 15 (e) Proposal requirements including a requirement to provide
- 16 all of the following:
 - 17 (1) A sealed cost proposal.
 - 18 (2) A critical path matrix schedule and cashflow requirements.
 - 19 (3) Proposal security.
- 20 (f) Technical review process.
- 21 (g) Selection and award processes.
- 22 22407. (a) The first step in the procurement process for a
- 23 design-build contract under this part shall be to request and
- 24 evaluate statements of qualifications submitted by interested
- 25 design-build firms, and to prequalify or shortlist the design-build
- 26 firms that will be invited to submit proposals in accordance with
- 27 the criteria published by the public entity. The public entity must
- 28 receive at least three letters of interest before requesting statements
- 29 of qualifications. The prequalification or shortlisting decision
- 30 shall be based in part on an evaluation of the demonstrated
- 31 competence and the professional qualifications of architectural,
- 32 landscape architectural, engineering, environmental, land
- 33 surveying, and construction management firms. This step shall
- 34 satisfy the requirements of Sections 4526 and 4529.12 of the
- 35 Government Code regarding procurement requirements
- 36 applicable to professional services contracts.
- 37 (b) The second step in the procurement process shall be to
- 38 request and evaluate proposals. The public entity shall request
- 39 proposals from no fewer than three of the design-build firms
- 40 submitting letters of interest. If a design-build firm withdraws

1 from consideration after the public entity requests proposals, the
2 public entity may continue if at least two proposals are received.

3 (c) The procurement process may also include discussions with
4 the proposers following receipt of initial proposals, followed by a
5 request for and evaluation of final proposals. The process may also
6 include negotiations with the selected proposer prior to award of
7 the contract.

8 22408. The request for proposals shall include, but not be
9 limited to, the following elements:

10 ~~(1)–~~

11 (a) Identification of the basic scope and needs of the project or
12 contract, the expected cost range, and other information deemed
13 necessary by the public entity to inform interested parties of the
14 contracting opportunity and of the methodology that will be used
15 by the public entity to evaluate proposals.

16 ~~(2)–~~

17 (b) Significant factors that the public entity reasonably expects
18 to consider in evaluating proposals on a best value basis, including
19 cost or price, life cycle costs, project features, functions, and all
20 other nonprice related factors.

21 ~~(3)–~~

22 (c) The relative importance or weight assigned to each of the
23 factors identified in the request for proposals. If a nonweighted
24 system is used, the public entity shall specifically disclose whether
25 all evaluation factors other than cost or price, when combined, are
26 one of the following:

27 ~~(A)–~~

28 (1) Significantly more important than cost or price.

29 ~~(B)–~~

30 (2) Approximately equal in importance to cost or price.

31 ~~(C)–~~

32 (3) Significantly less important than cost or price.

33 22409. (a) The public entity shall evaluate the submissions
34 received in response to the request for proposals, based on the
35 criteria and in accordance with the selection procedures specified
36 in the request for proposals, and in compliance with rules relating
37 to discussion of proposals, submission of final proposals, and
38 evaluations of the proposals submitted. *Competitive proposals*
39 *shall be evaluated by using only the criteria and selection*
40 *procedures specifically identified in the request for proposal.*

1 *However, the following minimum factors shall each represent at*
2 *least 10 percent of the total weight of consideration given to all*
3 *criteria factors:*

4 *(1) Price.*

5 *(2) Technical design and construction expertise.*

6 *(3) Life cycle costs over 15 years or more.*

7 *(4) Acceptable safety record. A bidder's safety record shall be*
8 *deemed acceptable if, for each listed contractor and*
9 *subcontractor, its experience modification rate for the most recent*
10 *three-year period is an average of 1.00 or less and its average total*
11 *recordable injury or illness rate and average lost work rate for the*
12 *most recent three-year period does not exceed the applicable*
13 *statistical standards for its business category.*

14 *(5) Skilled labor force availability, determined by the existence*
15 *of an agreement with a registered apprenticeship program*
16 *approved by the California Apprenticeship Council that has*
17 *graduated apprentices in each of the preceding five years. This*
18 *graduation requirement shall not apply to a program providing*
19 *apprenticeship training for any craft that was first deemed by the*
20 *Department of Labor and the Department of Industrial Relations*
21 *to be an apprenticable craft within the five-year period preceding*
22 *January 1, 2005.*

23 *(b) The award of the design-build contract shall be made to the*
24 *responsible proposer whose proposal is determined to offer the*
25 *best value to the public. The public entity may reserve the right to*
26 *move on to the second (and, if necessary, the third) ranked*
27 *responsive proposer if the public entity is not able to conclude a*
28 *contract satisfactory to the public entity with the first-ranked*
29 *responsive proposer.*

30 *(c) The public entity shall publicly announce its award,*
31 *identifying the design-build contractor to whom the award is*
32 *made, and shall provide with the announcement a written decision*
33 *supporting the public entity's contract award that states in detail*
34 *the basis of the award. The notice of award shall also identify the*
35 *second-ranked and third-ranked design-build firms.*

36 *(d) The public entity shall maintain a file containing all of the*
37 *information, documents, and submissions regarding the*
38 *procurement process.*

39 *22410. Any construction, alteration, demolition, repairs, or*
40 *other works of improvement performed under a contract awarded*

1 pursuant to this part shall be considered a public works project
2 subject to Chapter 1 (commencing with Section 1720) of Part 7 of
3 Division 2 of the Labor Code, and shall be enforced by the
4 Department of Industrial Relations in the same way it carries out
5 this responsibility under the Labor Code.

6 22411. (a) The public entity, in each design-build request for
7 proposals, may identify specific types of subcontractors that must
8 be included in the design-build contractor's statement of
9 qualifications and proposal. In selecting the types of
10 subcontractors that must be listed, the public entity shall limit
11 identification to only those types of subcontractors deemed
12 essential for proper completion of the project. The design-build
13 firm may identify subcontractors in its proposal in addition to
14 those required to be identified by the public entity. All construction
15 subcontractors that are identified in the proposal shall be afforded
16 all the protections of Chapter 4 (commencing with Section 4100)
17 of Part 1.

18 (b) With the exception of the subcontracts listed in the
19 proposal, the design-build contractor shall award each
20 construction subcontract in excess of one-half of 1 percent of the
21 design-build contract price allocable to construction work in
22 accordance with a competitive procurement process satisfactory to
23 the public entity and meeting the requirements of this subdivision.
24 The subcontracting process shall include the following steps:

25 (1) Provide public notice of the availability of construction
26 work to be subcontracted.

27 (2) Provide a fixed date and time at which the subcontracted
28 construction work will be awarded.

29 (3) Establish reasonable prequalification criteria and
30 standards.

31 (4) Provide that the subcontracted construction work shall be
32 awarded either on a best value basis or to the lowest responsible
33 bidder.

34 22412. ~~(a)~~—The design-build contractor shall provide
35 payment and performance bonds for the project in the form and in
36 the amount required by the public entity, and issued by a surety or
37 sureties satisfactory to the public entity. Notwithstanding any
38 other provision of law, the amount of the payment bond shall be
39 equal to the total design-build contract price unless the public
40 employee delegated responsibility for the contract makes a written

determination supported by specific findings that a payment bond in that amount is impractical, in which case the amount of the payment bond shall be set by that public employee. In no case shall the amount of the payment bond be less than the amount of the performance bond.

22413. *The transportation authority may retain the services of a design professional or construction project manager, or both, who shall serve as an inspector throughout the course of the project in order to ensure compliance with this part. The transportation authority shall be the employer of the inspector. The inspector shall be fully independent from any member of the design-build contractor and shall not have any affiliation with any member of the design-build contractor or any of the project subcontractors.*

SEC. 2. Section 217 of the Streets and Highways Code is amended to read:

217. The following definitions apply for the purposes of this article:

(a) “Design” is a plan completed to a level of 30 percent.

(b) “Design-sequencing” is a method of contracting that enables the sequencing of design activities to permit each construction phase to commence when design for that phase is complete, instead of requiring design for the entire project to be completed before commencing construction.

(c) A “design-sequencing contract” is a contract between the department and a contractor that requires the department to prepare a design and permits construction of a project to commence upon completion of design for a construction phase.

(d) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 3. Section 217.7 is added to the Streets and Highways Code, to read:

217.7. (a) Notwithstanding Chapter 1 (commencing with Section 10100) of Part 2 of Division 2 of the Public Contract Code, except Section 10128 of that code, and Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, the department may conduct a phase two pilot program to let design-sequencing contracts for the design and construction of not more than 12 transportation projects, to be selected by the

1 director. For the purpose of this article, these projects shall be
2 deemed public works.

3 (b) In selecting projects for the pilot program authorized under
4 subdivision (a), the director shall attempt to balance geographical
5 areas among test projects as well as pursue diversity in the types
6 of projects undertaken. In this process, the director shall consider
7 selecting projects that improve interregional and intercounty
8 routes.

9 (c) To the extent available, the department shall seek to
10 incorporate existing knowledge and experience on
11 design-sequencing contracts in carrying out its responsibilities
12 under subdivision (a).

13 (d) This section shall remain in effect only until January 1,
14 2010, and as of that date is repealed, unless a later enacted statute,
15 that is enacted before January 1, 2010, deletes or extends that date.

16 SEC. 4. Section 217.8 is added to the Streets and Highways
17 Code, to read:

18 217.8. (a) Not later than July 1, 2006, and July 1 of each
19 subsequent year during which a contract under the phase two pilot
20 program, as described in Section 217.7, is in effect, the department
21 shall prepare a status report on its contracting methods,
22 procedures, costs, and delivery schedules. Upon completion of all
23 design-sequencing contracts, but in no event later than January 1,
24 2010, the department shall establish a peer review committee to
25 prepare a report for submittal to the Legislature that describes and
26 evaluates the outcome of the contracts provided for in Section
27 217.7, stating the positive and negative aspects of using
28 design-sequencing as a contracting method.

29 (b) This section shall remain in effect only until January 1,
30 2010, and as of that date is repealed, unless a later enacted statute,
31 that is enacted before January 1, 2010, deletes or extends that date.

32 SEC. 5. Section 217.9 is added to the Streets and Highways
33 Code, to read:

34 217.9. Design-sequencing contracts under the phase two pilot
35 program, as described in Section 217.7, shall be awarded in
36 accordance with all of the following:

37 (a) The department shall advertise design-sequencing projects
38 by special public notice to contractors.



1 (b) Contractors shall be required to provide prequalification
2 information establishing appropriate licensure and successful past
3 experience with the proposed work.

4 (c) This section shall remain in effect only until January 1,
5 2010, and as of that date is repealed, unless a later enacted statute,
6 that is enacted before January 1, 2010, deletes or extends that date.

